

# **Exhibit 36**

Declaration of Eric Rassbach

# **FINAL REPORT OF THE REGENTS WORKING GROUP ON PRINCIPLES AGAINST INTOLERANCE**



**January 22, 2016**

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### **Contextual Statement**

#### Introduction: The Working Group and its Process

During the 2014-15 academic year, the Regents received correspondence and public comment from a variety of sources expressing concern that there has been an increase in incidents reflecting anti-Semitism on UC campuses. These reported incidents included vandalism targeting property associated with Jewish people or Judaism; challenges to the candidacies of Jewish students seeking to assume representative positions within student government; political, intellectual and social dialogue that is anti-Semitic; and social exclusion and stereotyping. Fundamentally, commenters noted that historic manifestations of anti-Semitism have changed and that expressions of anti-Semitism are more coded and difficult to identify. In particular, opposition to Zionism<sup>1</sup> often is expressed in ways that are not simply statements of disagreement over politics and policy, but also assertions of prejudice and intolerance toward Jewish people and culture.

Anti-Semitism, anti-semitic forms of anti-Zionism and other forms of discrimination have no place at the University of California. Most members of the University community agree with this conclusion and would agree further that the University should strive to create an equal learning environment for all students. This said, members of the community express widely divergent views about how the University should respond to incidents of overt, and more particularly, covert anti-Semitism and other forms of prohibited discrimination and intolerance. In light of the evolving nature of anti-Semitism, some commenters recommended that the Regents endorse or adopt a definition of anti-Semitism that has been attributed to the U.S. Department of State. They express the view that adopting a

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<sup>1</sup> Merriam Webster defines Zionism as follows: an international movement originally for the establishment of a Jewish national or religious community in Palestine and later for the support of modern Israel. <http://www.merriam-webster.com/dictionary/Zionism>  
The Oxford American Dictionary defines Zionism as follows: A movement for (originally) the [re-establishment](http://www.oxforddictionaries.com/us/definition/american_english/zionism) and (now) the development and protection of a Jewish nation in what is now [Israel](http://www.oxforddictionaries.com/us/definition/american_english/zionism). [http://www.oxforddictionaries.com/us/definition/american\\_english/zionism](http://www.oxforddictionaries.com/us/definition/american_english/zionism)

definition of anti-Semitism would help members of the University recognize and respond to anti-Semitism.<sup>2</sup> Some commenters urged the Regents to sanction members of the University community who express views thought to be anti-Semitic, while others asserted that the State Department definition would sweep in speech protected by principles of academic freedom and the First Amendment. Sanctioning people based on their speech, they say, would violate the First Amendment. Others expressed concerns about defining and focusing on anti-Semitism alone when other forms of bias and prejudice also occur on UC campuses, but have not been specifically defined or addressed in Regents policy.<sup>3</sup> Finally, some commenters asserted that expressions based on stereotypes, prejudice and intolerance impact the learning environment for some members of the University community, and that prohibiting such expressions altogether should be deemed a legitimate approach to enforcing the University's non-discrimination policies.<sup>4</sup>

At our September 2015 meeting, the Regents considered the adoption of a draft statement of principles against intolerance. After receiving public comment and engaging in extensive discussion, the Regents elected not to move forward with the draft in its then current form. Members cited a number of concerns that led to the decision not to move forward. In the end, Chair Monica Lozano announced the formation of a Working Group, to be chaired by Regent Eddie Island, and charged the Group with developing a statement reflecting the Board's discussion, as well as the principles of academic freedom and freedom of

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<sup>2</sup> A 2010 U.S. State Department Fact Sheet uses the following definition of Anti-Semitism: "a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities." The document provides a number of examples of anti-Semitism. With respect to Israel, it identifies Demonizing Israel, applying a Double Standard to Israel and Delegitimizing Israel (sometimes referred to as the 3 Ds). The Fact Sheet further notes that "criticism of Israel similar to that leveled against any other country cannot be regarded as anti-Semitic." See <http://www.state.gov/j/drl/rls/fs/2010/122352.htm>

<sup>3</sup> The University's non-discrimination policies do address many forms of prejudice and intolerance, including discrimination based on religion and many other characteristics of individual identity.

<sup>4</sup> The Working Group does not intend to capture all the viewpoints expressed to the Regents or the Working Group. This paragraph instead highlights only key points of difference that were considered by the Working Group.

expression. The Working Group comprises Regents Island, Oved, Pattiz, Perez, and Varner; Faculty Representative Hare; Chancellor Katehi; and Vice Provost and Chief Outreach Officer Gullatt. The Working Group has been supported by General Counsel and Vice President Charles Robinson and Secretary and Chief of Staff Anne Shaw.

In the course of preparing a draft statement, the Working Group convened a day-long public forum, on October 26, 2015, in order to receive additional input from interested parties and members of the public, beyond that received at several Regents meetings. Following the public forum, on December 1, 2015, the Working Group invited four recognized scholars and/or leaders on the subjects of discrimination, with a particular focus on anti-Semitism, and on free speech, to come before the group and present their views on what might be an effective statement on intolerance. These experts were UCLA Professor of Law and Vice Chancellor for Equity, Diversity and Inclusion Jerry Kang, UCLA Gary D. Schwartz Professor of Law Eugene Volokh, President and General Counsel of the Louis D. Brandeis Center for Human Rights Under the Law Kenneth L. Marcus, and Founder and Dean of the Simon Wiesenthal Center Rabbi Marvin Hier. In addition to making presentations, each of these experts provided written materials to the Working Group for further consideration.

The Working Group then convened for a series of meetings in December 2015 and January 2016 to develop a statement on intolerance. In addition to the forums convened as described above, the Working Group, and the Secretary's Office on behalf of the Board, have received extensive comment from many members of the University community and the general public. In December, 2015, Student Regent Avi Oved began soliciting input by email from all UC students.

#### Working Group Observations

The efforts of the Working Group throughout its process were guided by the following observations:

The University of California is a place where students encounter a wide range of views, opinions, and lifestyles that can prompt them to reexamine aspects of their lives that they may have taken for granted. Like all public

universities, UC accepts and brings to our campuses students from diverse communities. It is not uncommon for students to find themselves interacting with peers from groups they might otherwise have avoided or might never have encountered. Lack of exposure to groups from different communities can lead to insufficient understanding and appreciation of the viewpoints and sensitivities of others. In the collective view of the Working Group, students at UC campuses should expect to be challenged both intellectually and emotionally. They should expect more intense intellectual and emotional give and take than they might have previously experienced. Some of the ideas a student encounters may be abhorrent to that student or their family members and friends; nevertheless, these ideas may be instrumental in helping a student further define their own vision.

The Campus experience may include engagement with contemporary international disputes related to aspects of personal identity that members of the UC community hold dear. Recently, in the context of debates about Israel and its neighbors, members of the UC community have come forward with concerns that anti-Semitic stereotypes and tropes of Jewish people appear coded as political discourse about Israel and its policies. The University community is part of a larger world in which contemporary policy disputes and even armed conflicts are closely tied to heritages that, for many, are essential aspects of people's personal identities. In this context, policy positions are sometimes framed in terms that are perceived, rightly or mistakenly, to be personal attacks based on prejudice and intolerance linked to group identity.

The Working Group considered other examples raising similar concerns. Terrorist attacks by self-identified religious fundamentalists have fueled Islamophobic acts against peaceful members of our communities who are -- or are presumed to be -- followers of Islam. These attacks and counter-attacks generate fear on UC campuses as much as they do outside the UC community, and they sometimes generate policy positions or statements that are perceived to be personal attacks that reflect prejudice or intolerance based solely on religious belief.

Discussions related to differences arising from race, ethnicity, gender, sexual orientation, national origin, citizenship, or other individual identity characteristics also can result in attacks and discourse that reflect stereotypes,

prejudice or intolerance. For example, the Black Lives Matter movement has brought renewed focus to aspects of racial inequality that persist despite decades of struggle to overcome them. Debates on college campuses about anti-Black racism have highlighted instances of isolation and exclusion that create unequal learning environments for Black students. Similarly, members of the University community have reported that the debates over U.S. immigration policy are of great personal importance to them. Policy debates about immigration, we are told, sometimes reflect bias and prejudice based on actual or perceived national origin or ethnicity. Likewise, the recent state and national dialogue about marriage equality has been of great personal importance to some members of the UC community. In some instances, this dialogue may have reflected bias and prejudice toward members of the LGBT community.

In the view of the Working Group, debate and community life on public university campuses inevitably reflect the social and political conflicts that surround us. Members of the UC community historically have been both the targets of injustice and the leaders of movements to promote equality and fairness. The unique environment of a public university campus, which serves as both a home and a workplace to tens of thousands of learners drawn from widely diverse experiences, often gives these debates added intellectual and emotional intensity.

Other incidents of prejudice and intolerance arise, not in connection with policy debates, but in acts of social exclusion, stereotyping, threats of violence or vandalism. At one extreme, rudeness may reflect stereotypes that intentionally or unintentionally convey intolerance. At the other extreme, intolerance can include criminal behavior that can and should be reported, investigated, and where appropriate, sanctioned within the student or faculty discipline process, as appropriate, and/or the criminal justice system.

In light of the number and frequency of acts of intolerance reported by the commenters appearing before the Working Group, the group has concluded that the time is particularly apt for the Regents to reaffirm the special role and mission of the University of California and our aspirations for all members of the University of California community. Punishing expressions of prejudice and intolerance will not prevent such expressions or change the minds of speakers. In confronting statements reflecting bias, prejudice or intolerance, the University is

uniquely situated to respond with more speech – to educate members of our community about the different histories and perspectives from which we approach important issues. As a public university, First Amendment principles and academic freedom principles must be paramount in guiding the University’s response to instances of bias, prejudice and intolerance and its efforts to create and maintain an equal campus learning environment for all.

The Regents Policy on Policies (RP 1000), which calls on the Regents to adopt policies supporting the purpose, principles, and philosophy of the tripartite mission of the University, is at the core of the Working Group’s efforts. The group notes that many existing University policies address issues related to intolerance on campus. Some have been previously adopted by the Regents while others have been adopted by the administration and/or Academic Senate. Others, particularly principles of community, have been adopted by individual campuses. See the accompanying Appendix A for a brief survey of such policies.

To supplement and enhance these existing policies, the Working Group proposes that the Regents adopt the accompanying Principles Against Intolerance. These Principles transcend specific examples of intolerance and, following directly from the University’s mission, provide a consistent basis for responding to intolerant speech and acts. We expect that University leaders will consider both the Principles Against Intolerance and existing University policies to guide their actions.



## **Regents Policy: Principles Against Intolerance**

- a. The mission of the University is to promote discovery and create and disseminate knowledge, to expand opportunities for all, and to educate a civil populace and the next generation of leaders. The University therefore strives to foster an environment in which all are included, all are given an equal opportunity to learn and explore, in which differences as well as commonalities are celebrated, and in which dissenting viewpoints are not only tolerated but encouraged. Acts of hatred and other intolerant conduct, as well as acts of discrimination that demean our differences, are antithetical to the values of the University and serve to undermine its purpose.
- b. University policy prohibits discrimination based on race, color, national origin, religion, sex, gender, gender expression, gender identity, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, service in the uniformed services, or the intersection of any of these factors. Prohibited discrimination arising from historical biases, stereotypes and prejudices jeopardizes the research, teaching and service mission of the University. This mission is best served when members of the University community collaborate to foster an equal learning environment for all, in which all members of the community are welcomed and confident of their physical safety.
- c. Human history encompasses many periods in which biased, stereotypical or prejudiced discourse, left unchallenged and uncontested, has led to enormous tragedy. In a community of learners, teachers, and knowledge-seekers, the University is best served when its leaders challenge speech and action reflecting bias, stereotypes, and/or intolerance. Anti-Semitism and other forms of discrimination have no place in the University. The Regents call on University leaders actively to challenge anti-Semitism and other forms of discrimination when and wherever they emerge within the University community.
- d. Freedom of expression and freedom of inquiry are paramount in a public research university and form the bedrock on which our mission of discovery is founded. The University will vigorously defend the principles of the First

Amendment and academic freedom against any efforts to subvert or abridge them.

- e. Each member of the University community is entitled to speak, to be heard, and to be engaged based on the merits of their views, and unburdened by historical biases, stereotypes and prejudices. Discourse that reflects such biases, stereotypes or prejudice can undermine the equal and welcoming learning environment that the University of California strives to foster. The University seeks to educate members of the community to recognize, understand and avoid biases, stereotypes and prejudices.
- f. Regardless of whether one has a legal right to speak in a manner that reflects bias, stereotypes, prejudice and intolerance, each member of the University community is expected to consider his or her responsibilities as well as his or her rights. Intellectual and creative expression that is intended to shock has a place in our community. Nevertheless, mutual respect and civility within debate and dialogue advance the mission of the University, advance each of us as learners and teachers, and advance a democratic society.
- g. Candidates for University leadership positions are entitled to consideration based on their stated views and actions, and in a manner consistent with the University's nondiscrimination policy. Efforts to discredit such candidates based on bias or stereotyping should not go unchallenged.
- h. Actions that physically or otherwise interfere with the ability of an individual or group to assemble, speak, and share or hear the opinions of others (within time place and manner restrictions adopted by the University) impair the mission and intellectual life of the University and will not be tolerated.
- i. Harassment, threats, assaults, vandalism, and destruction of property, as defined by University policy, will not be tolerated within the University community. Where investigation establishes that such unlawful conduct was targeted at an individual or individuals based on discrimination prohibited by University policy, University administrators should consider discipline that includes enhanced sanctions. In addition to discipline and consistent with the University's mission to educate members of our community, University administrators should use all available tools, including restorative justice

techniques, to address such unlawful conduct, in order to foster learning and mutual respect.

- j. The Regents call on University leaders to apply these Principles Against Intolerance and all other University policies directed to discrimination and intolerance to the full extent permissible under law. University leaders should assure that they have processes in place to respond promptly, and at the highest levels of the University, when appropriate, when intolerant and/or discriminatory acts occur. Such response should include consideration of support for members of the community directly affected by such acts.

## Appendix A

- Regents Policy (RP) 1111: Policy on Statement of Ethical Values and Standards of Ethical Conduct calls on all members of the University to conduct ourselves in a manner that reflects fair dealing, individual responsibility and accountability, and respect for others.  
<http://regents.universityofcalifornia.edu/governance/policies/1111.html>
- RP 3303: Policy on Employee and Student Protections Related to Student Press and Student Free Speech Rights provides that students shall not be subject to discipline on the basis of protected speech but notes several reserved areas of University authority, including to establish and enforce non-discrimination policies.  
<http://regents.universityofcalifornia.edu/governance/policies/3303.html>
- Several provisions of the Policies Applying to Campus Activities, Organizations and Students (PACAOS) establish expectations for the conduct of students as members of the University community and provide for discipline of students; especially relevant grounds for discipline include:
  - 102.04 addressing damage to property of University or others on University premises
  - 102.08 addressing physical abuse, assault and threats of violence
  - 102.09 addressing harassment so severe and pervasive as to substantially impair a person's access to University programs effectively denying equal access
  - 102.09 also provides for enhanced sanctions where harassment is motivated on the basis of various protected characteristics including, among others, race, national origin, citizenship, sex, religion, sexual orientation, et al (see also 104.90)
  - 102.10 addresses stalking behavior making a credible threat of intent to cause a person to fear for his or her safety where it alarms, torments or terrorizes an individual and serves no legitimate purpose (such as self-defense) (also 102.24)
  - 102.13 addresses obstruction of teaching, research, administration, disciplinary procedures or other University activities
  - 102.14 addresses disorderly conduct
  - 102.15 addresses disturbance of the peace and unlawful assembly

- 104.10 authorizes Chancellors to discipline for violation of University policies and campus regulations even where conduct does not also violate law
- 105.00 provides for following types of student discipline: warning/censure, probation, loss of privileges and exclusion from activities, exclusion from areas of campus or University functions, suspension, dismissal, restitution, revocation of awarding of degree and also provides for interim suspension during an investigation and/or conduct proceeding

See: <http://policy.ucop.edu/doc/2710530/PACAOS-100>

- Policies governing staff are found in the Personnel Policies for Staff Members (PPSM), especially PPSM 12 re nondiscrimination and PPSM 62 re corrective action.

<http://policy.ucop.edu/doc/4000376/NondiscrimAffirmAct>

General University Policy regarding academic appointees is found in the Academic Personnel Manual (APM).

- APM-010, the University's policy on academic freedom.  
<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-010.pdf>
- APM-015, the Faculty Code of Conduct, was approved by the Academic Senate and establishes ethical principles, rights and responsibilities for faculty to define and support academic freedom; it also defines unacceptable conduct by faculty.  
<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>
- APM-016 sets University policy on faculty conduct and the administration of discipline.  
<http://ucop.edu/academic-personnel-programs/files/apm/apm-016.pdf>